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OFFICE OF PETITIONS

In re Application of
Hou Chong Lei
Application No. 10/643,287
Filed: August 18, 2003
Atty's Docket No. 211/240

ON PETITION

This is a decision in response to the "Response to Notice to File Missing Parts", filed January 16, 2004, and which is treated as petition under 37 CFR 1.82.

The petition is **DISMISSED** as involving moot issues.

The application was filed August 18, 2003. However, on December 13, 2003, the Office of Initial Patent Examination mailed a Notice To File Missing Parts noting that, amongst other things, the application had been accorded a filing date of August 18, 2003, but that Figures 8-9 described in the specification appeared to have been omitted.

The mailing of a "Notice of Omitted Items" permits the applicant to either: (1) promptly establish prior receipt in the PTO of the drawing(s) at issue (generally by way of a date-stamped postcard receipt (MPEP 503)), or (2) promptly submit the omitted drawing(s) in a nonprovisional application and accept the date of such submission as the application filing date. An applicant asserting that the missing drawings were in fact deposited in the PTO with the application papers must file a petition (and the appropriate petition fee) with evidence of such deposit. An applicant desiring to submit the omitted drawings in a nonprovisional application and accept the date of such submission as the application filing date must file any omitted drawing(s) with an oath or declaration in compliance with 37 CFR 1.63 and 1.64 referring to such drawing(s) and a petition under 37 CFR 1.182 (with the petition fee under 37 CFR 1.17(h)) requesting the later filing date within two months of the date of the "Notice of Omitted Items" (37 CFR 1.181(f)).

Finally, the third option is in the absence of electing options 1) or 2) above, to constructively opt to accept the filing date which has been accorded with the papers filed upon application. With option 3), no petition under 37 CFR 1.182 is necessary for that purpose.

In this case, petitioners neither assert nor concede that the missing figures were deposited on August 18, 2003. Rather, petitioners responded in a timely manner that they will take no action at this time.

With this, Figures 8-9 may be entered by the primary examiner without petition so long as the new drawings contain no new matter. See MPEP § 608.02(a). If Figures 8-9 are submitted as a preliminary amendment, it will be reviewed by the examiner for new matter.¹

Thus, the application will continue to be processed and examined using only the application papers filed on August 18, 2003 and no action is being taken with respect to this petition.

The application is being returned to the Office of Initial Patent Examination for further processing with a filing date of August 18, 2003, using the application papers filed on that date.

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (703)305-4497.

A handwritten signature in black ink, reading "Patricia Faison-Ball". The signature is fluid and cursive, with the first name "Patricia" being the most prominent part.

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

¹37 CFR 1.121(b).